

[Cite as *State v. Sevayega*, 2009-Ohio-5008.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92499

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

REGINALD SEVAYEGA

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-290548

BEFORE: Jones, J., Kilbane, P.J., and Blackmon, J.

RELEASED: September 24, 2009

JOURNALIZED:

FOR APPELLANT

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Reginald Sevayega (“Sevayega”), appeals the denial of his postconviction petition. Finding no merit to the appeal, we affirm.

{¶ 2} In 1993, a jury convicted Sevayega of rape and two counts of tampering with evidence. The trial court sentenced Sevayega to 7-to-25 years in prison. We affirmed his conviction on appeal. *State v. Sevayega* (Sep. 22, 1994), Cuyahoga App. No. 65942. The Ohio Supreme Court subsequently dismissed Sevayega’s appeal. *State v. Sevayega* (1995), 71 Ohio St.3d 1477, 645 N.E.2d 1257.

{¶ 3} Sevayega filed his first postconviction petition in 1997, which the trial court denied. Sevayega’s appeal of the trial court’s ruling was subsequently dismissed by this court as untimely filed. *State v. Sevayega* (Jan. 8, 1999), Cuyahoga App. No. 75571.

{¶ 4} In 2003, the trial court classified Sevayega as a sexual predator, pursuant to former R.C. Chapter 2950. We affirmed the classification in *State v. Sevayega*, Cuyahoga App. No. 83392, 2004-Ohio-4909, appeal not allowed, 105 Ohio St.3d 1440, 822 N.E.2d 811, 2005-Ohio-531. Between 2003 and 2008, Sevayega filed numerous motions with the trial court challenging the sexual predator classification.

{¶ 5} Also in 2003, Sevayega filed his second petition for postconviction relief, which the trial court denied. We affirmed the decision of the trial court.

State v. Sevayega, Cuyahoga App. No. 84395, 2004-Ohio-6706, appeal not allowed, 105 Ohio St.3d 1502, 825 N.E.2d 624, 2005-Ohio-1666.

{¶ 6} In March 2008, Sevayega filed a motion pursuant to Civ.R. 60(B)(5) asking for an “order granting a hearing.” The trial court recasted the motion as a postconviction petition.¹

{¶ 7} In his third postconviction petition, that he filed pro se and is the subject of this appeal, Sevayega alleges that there were irregularities in various postconviction proceedings, e.g., the hearing on his second postconviction petition and his sexual predator classification hearing.

{¶ 8} The trial court denied Sevayega’s third postconviction petition, from which he now appeals.

{¶ 9} Sevayega assigns six errors for our review:

- “I. The trial court abused its authority and denied due process when it failed to follow U.S. Supreme Court precedent in the postconviction [sic] proceedings.
- “II. The trial court erred when it renamed an unambiguously specified motion.
- “III. The trial court erred when it failed to acknowledge that fraud upon the court falls within the ambit of Civ.R. 60(B)(5).
- “IV. The court erred when it failed to acknowledge that the appellant satisfied the requirements of *GTE*.
- “V. The court abused its authority when it dismissed a claim of fraud upon the court without a hearing.

¹ Sevayega also filed a writ of procedendo with this court, arguing that the trial court did not rule on his motion in a timely manner. We dismissed the writ. *State ex rel. Sevayega v. McMonagle*, Cuyahoga App. No. 92157, 2008-Ohio-6275, affirmed by, 122 Ohio St.3d 54, 907 N.E.2d 1180, 2009-Ohio-2367.

“VI. The court abused its authority when it failed to sign the journal entry rendering the case nonappealable.”

{¶ 10} Because these assignments of error are similar, we will address them together.

{¶ 11} First, Sevayega stated that he was filing his motion pursuant to Civ.R. 60(B)(5), but Civ.R. 60(B) does not apply in these circumstances. See *State v. Schlee*, 117 Ohio St.3d 153, 882 N.E.2d 431, 2008-Ohio-545, at ¶12. Rather than dismiss the motion as wrongly filed, the trial court appropriately considered Sevayega’s motion as a petition for postconviction relief under R.C. 2953.21. *Id.* at syllabus (stating “[t]he trial court may recast an appellant’s motion for relief from judgment as a petition for postconviction relief when the motion has been unambiguously presented as a Civ.R. 60(B) motion”).

{¶ 12} We employ an abuse of discretion standard when reviewing a trial court’s denial of a petition for postconviction relief based upon R.C. 2953.21. *State v. Hines*, Cuyahoga App. No. 89848, 2008-Ohio-1927. An abuse of discretion connotes more than an error in law or judgment, it means that the trial court’s decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 13} A petition for postconviction relief under R.C. 2953.21 is a collateral civil attack on a criminal judgment, not an appeal of the judgment. *State v. Steffen* (1994), 70 Ohio St.3d 399, 410, 639 N.E.2d 67. “It is a means to reach constitutional issues which would otherwise be impossible to reach because the

evidence supporting those issues is not contained in the record.” *State v. Murphy* (Dec. 26, 2000), Franklin App. No. 00AP-233, discretionary appeal not allowed (2001), 92 Ohio St.3d 1441, 751 N.E.2d 481.

{¶ 14} R.C. 2953.21 affords a prisoner postconviction relief “only if the court can find that there was such a denial or infringement of the rights of the prisoner as to render the judgment void or voidable under the Ohio Constitution or the United States Constitution.” *State v. Perry* (1967), 10 Ohio St.2d 175, 226 N.E.2d 104, paragraph four of the syllabus. A postconviction petition does not provide a petitioner a second opportunity to litigate his or her conviction. *State v. Hessler*, Franklin App. No. 01 AP-1011, 2002-Ohio-3321, at ¶32. Nor does a postconviction petition allow a petitioner to challenge the denial of a previous postconviction petition or a sexual predator classification. The means of redress available to Sevayega were the direct appeals he filed, not successive postconviction petitions.

{¶ 15} As stated previously in *Sevayega*, 2004-Ohio-6706, a trial court’s ability to review successive postconviction petitions filed pursuant to R.C. 2953.21 is limited. R.C. 2953.23(A) provides that:

“A court may not entertain * * * a second petition or successive petitions for similar relief on behalf of a petitioner unless * * *:

“(1) Both of the following apply:

“(a) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the period prescribed in division (A)(2) of section 2953.21 of the Revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal

or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

“(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted * * *.”

{¶ 16} In his current petition, Sevayega attached portions of the transcripts from his trial, sexual predator classification hearing, and postconviction hearing. As stated supra, a postconviction petition is not the proper avenue by which to challenge the rulings at his classification and postconviction hearing. Accordingly, those documents offer nothing new to support Sevayega's petition.

{¶ 17} Sevayega also claims that the trial court erred in dismissing his third petition for postconviction relief without first holding a hearing. We disagree. A trial court may dismiss a petition for postconviction relief without holding an evidentiary hearing when: 1) the petitioner fails to present “sufficient operative facts to establish substantive grounds for relief” and 2) the petitioner raises claims barred by the doctrine of res judicata. *State v. Thomas*, Cuyahoga App. No. 87666, 2006-Ohio-6588, citing *State v. Calhoun* (1999), 86 Ohio St.3d 279, 1999-Ohio-102, 714 N.E.2d 905, at paragraph two of the syllabus; *State v. Lentz*, 70 Ohio St.3d 527, 530, 1994-Ohio-532, 639 N.E.2d 784. In determining whether a hearing is mandated, the court must consider “whether there are substantive grounds for relief which would warrant a hearing based upon the petition, the supporting affidavits, and the files and records of the case.” *Thomas*, supra, citing *State v. Jackson* (1980), 64 Ohio St.2d 107, 413 N.E.2d 819.

{¶ 18} Next, the ancillary issues Sevayega raised in his third petition regarding his conviction were already raised on appeal and in his first and second postconviction petitions. These issues have already been thoroughly addressed by both the trial court and this court. Therefore, this petition is also barred by the principles of res judicata.

{¶ 19} The doctrine of res judicata excludes subsequent actions or postconviction petitions involving the same legal theory of recovery as the previous action or petition as well as claims which could have been presented in the first action or postconviction petition. *State v. Sawyer*, Cuyahoga App. No. 91496, 2009-Ohio-2391, citing *State v. Cole* (1982), 2 Ohio St.3d 112, 443 N.E.2d 169.

{¶ 20} Sevayega's motion contains nothing more than bald accusations, many of which this court rejected in earlier appeals. See *State v. Sevayega*, 2004-Ohio-6706. Moreover, the crux of this third petition is to challenge the denial of his previous postconviction petitions and sexual predator classification. Thus, the trial court properly denied his motion as it had absolutely no merit.

{¶ 21} Because Sevayega failed to demonstrate, as required by R.C. 2953.23(A), that he was unavoidably prevented from discovery of the facts upon which he relied to present his claim and that no reasonable factfinder would have found him guilty of the offense, and, further, because his petition is barred by res judicata, the trial court properly denied his second petition for postconviction relief.

{¶ 22} Accordingly, the assignments of error are overruled.

{¶ 23} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, JUDGE

MARY EILEEN KILBANE, P.J., and
PATRICIA A. BLACKMON, J., CONCUR